

REMARKS

In view of the following remarks, Applicants respectfully submit that all claims of the instant application are in condition for allowance, an indication of which is respectfully requested.

As a preliminary matter, Applicants thank Examiner Mcadams for the thoughtful courtesies and kind treatments afforded to Applicants' representative, Babak Akhlaghi, during the telephonic interview conducted on August 10, 2010. This response reflects the substance of the interview.

Patentability - 35 U.S.C. § 103

Claims 1, 5, 6, and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 7,007,092 ("Peiffer") in view of U.S. Patent Number 6,917,971 ("Klein"). Applicants respectfully traverse this rejection for at least the following reasons.

During the interview, Applicants' representative inquired as to why the detailed Office Action does not specifically address claims 4, 7-9, and 12 of the instant application and why the Office Action has maintained the previous grounds of rejection in light of the interview conducted on March 24, 2010. With respect to the first inquiry, the Examiner indicated that this was a typographical error. The Examiner agreed that, upon filing this response indicating the deficiency of the Office Action in this regard and if the case was not allowable, the Examiner would issue another non-final Office Action addressing claims 4, 7-9, and 12 of the instant application.

However, the Examiner also indicated in the interview that after reviewing the case one more time, he still believes that the proposed combination of Peiffer and Klein teaches all the limitations of claims 1 and 11. Applicants disagree.

Referring to the Office Action, the Examiner concedes that Peiffer fails to expressly disclose a unit for measuring reception performance of a client apparatus. *See*, Office Action at page 4. The Examiner, however, asserts that Klein, in FIG. 2 and column 7, lines 26-54 and paragraph bridging columns 7 and 8, discloses a unit for measuring reception performance of a client apparatus at intervals of time. *Id.* Applicants disagree.

In the relied upon portion of Klein, a client device measures a total client segment time. To this end, the total response time agent 114 of Klein is disposed within client 104 (see, FIG. 1 of Klein) and not within a traffic control apparatus. Furthermore, in this portion, Klein does not teach measuring a network performance between each of the client apparatuses and the traffic control apparatus. Instead, the relied upon portion of Klein shows measuring the amount of time it takes to process the request on the outbound leg of the client 104 and the amount of it takes to process the request on the inbound leg of the client 104 and not the network performance between the client device and the traffic control apparatus.

As such, Klein also fails to describe or suggest a traffic control apparatus including, among other features, a unit for measuring reception performance of each of the client apparatuses including a network performance between each of the client apparatuses and the traffic control apparatus, as recited in claim 1.

Since each of Peiffer and Klein fails to describe or suggest the above-recited feature of claim 1, their proposed combination also fails to describe or suggest this feature. For at least the

foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1, along with its dependent claims.

Claim 11 includes features similar to the above-recited features of claim 1. Therefore, for at least the reasons presented above with respect to claim 1, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 11, along with its dependent claims.

Claims 3, 10, 13, and 14 were rejected under § 103(a) as being unpatentable over Peiffer in view of Klein and further in view of U.S. Patent Number 6,606,661 ("Agrawal"). Claims 16 and 17 were rejected under § 103(a) as being unpatentable over Peiffer in view of Klein and further in view of U.S. Patent Publication Number 2002/0138618 ("Szabo"). Claims 3, 10, 13, 14, 16, and 17 variously depend from claims 1 and 11. Therefore, for at least the reasons presented above with respect to claims 1 and 11, Applicants respectfully request reconsideration and withdrawal of the rejections of claims 3, 10, 13, 14, 16, and 17.

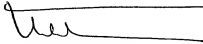
Conclusion

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Babak Akhlaghi
Limited Recognition No. L0250

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 BA:MWE
Facsimile: 202.756.8087
Date: August 26, 2010

**Please recognize our Customer No. 20277
as our correspondence address.**